2382.

SUPREME COURT OF THE UNITED STATES.

No. 180.

LESSEE OF POLLY WEATHERHEAD, PLAINTIFF IN ERROR,

vs.

WILLIAM BASHERVILLE AND AL.

IN ERROR TO THE CIRCUIT COURT, U. S., FOR MIDDLE DISTRICT OF TENNESSEE.

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Gideon, Printer.

MIDDLE DISTRICT OF TENNESSEE.

At a circuit court of the United States, began and held at Nashville, in and for the district aforesaid, on the first Monday, being the 2d day of September, in the year of our Lord one thousand eight hundred and forty-seven, and in the 72d year of the independence of the United States. Present, the honorable Jno. Catron, one of the associate justices of the Supreme Court of the United States; and the honorable Morgan W. Brown, judge of the courts of the United States, for the districts of East, Middle, and West Tennessee.

JOHN DEN, lessee of Polly Weatherhead, pl'ff,
vs.
WILLIAM BUSKERVILLE, John White, Jno. Parker, Peter Haynes, William Stewart, Nancy Stewart, Nelson B. Turner, Jacob Gallaspie, Peter Bryson, Benjamin Parrish, Wm. Johnson, Reuben D. Brown, defendants, Thomas Saunders, Richard Winn, Thomas Stone, Beverly Head, David Chenault, W. W. Weatherhead, John Weatherhead, George T. Brown, B. F. Sharp, and Francis Rogan.

Summons.

The President of the United States of America, to the marshal of middle Tennessee district, greeting:

You are hereby commanded to summon William Buskerville, Jno. White, Jno. Parker, Peter Haynes, Wm. Stuart, Nancy Stuart, Nelson B. Turner, Jacob Gallaspie, Peter Brysan, Benj. Parrish, Wm. Johnson, Reuben D. Brown, Thomas Saunders, Richard Winn, Thomas Stone, Beverly Head, David Chenault, W. W. Weatherhead, Jno. Weatherhead, George T. Brown, B. F. Sharp, and Frances Ragan, if they be found in your district, to be and appear before the judges of the circuit court of the United States, in the eighth circuit, for the district of Middle Tennessee, at Nashville, on the first Monday in March next, then and there to answer John Den, lessee of Polly Weatherhead, of a plea wherefore, with force and arms, they broke and entered the close of the said plaintiff, and ejected him, to his damage five hundred dollars, and have then there this writ.

Witness Roger B. Taney, esq., chief justice of the Supreme Court of the United States, this first Monday in September, in the year 1846, and of the independence of the United States the 71st.

Issued 20th October, 1846. JACOB W. GAVOCK, *Clerk.*

Affidavit of plaintiff.

I, Polly Weatherhead, do solemnly swear, that owing to my poverty I am not able to bear the expenses of the law suit which I am about to

commence, and that I am justly entitled to a recovery from the defendants, to the best of my belief, an amount within the jurisdiction of the court in which I am about to commence my said suit. So help me God.

her
POLLY ⋈ WEATHERHEAD.
mark.

Sworn and subscribed to before me, this 20th October, 1846.

J. W. GAVOCK, *Clerk.*
By G. M. FOGG, *his deputy.*

Marshal's return.

Came to hand same day issued; executed on W. W. Weatherhead, on 22d October, 1846, on the within named William Buskerville, John White, John Parker, Nelson B. Turner, Jacob Gallaspie, Peter Bryson, Benjamin Parrish, Thomas Saunders, Richard Winn, Thomas Stone, Beverly Head, David Chenault, John Weatherhead, and B. F. Sharp, on the 23d day of October, 1846; and on the following within named persons, Peter Haynes, Wm. Stuart, Nancy Stuart, and George T. Brown, on the 24th day of October, 1846, and delivered to each of the above named persons a copy of the declaration.

J. B. CLEMENTS,
Marshal middle district of Tennessee.

Executed on R. D. Brown and Frances Ragan, 1st December, 1846; on Wm. Johnson, 2d December, 1846, and delivered a copy of declaration to each of them.

J. B. CLEMENTS, *Marshal M. D. Tenn.*
By ARIS BROWN, *his deputy.*

Which declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA,
Middle district of Tennessee, eighth judicial circuit.

United States circuit court, March term, 1847.

John Den, who is a citizen of the State of Mississippi, by attorney complains of Richard Fen, who is a citizen of the State of Tennessee, who is in custody of a plea of trespass. For that Polly Weatherhead, who is a citizen of the State of Mississippi, on the first day of January, 1846, at to wit, in the district aforesaid, demised and to farm let, to the said Jno. Den, a tract of land in Sumner county, to wit, the district aforesaid, containing by estimation 6,280 acres, more or less, lying on both sides of Bledsoe's creek. Beginning at a hackberry and white oak, on the east bank of Bledsoe's creek, corner of Isaac Bledsoe's land; running thence, with his line, south 32° west, 60 poles, to a small red oak and dogwood, corner to Robert Desha's land; with his line north 218 poles, to a hickory and elm in Robert Stut's line; with his

line east 162 poles, to a black walnut; north 320 poles, to an ash and black walnut; west 30 poles, to a hickory and elm sapling, corner to Jno. Morgan; with his line north 580 poles, to a mulberry and black oak; east 236 poles, to a sugar-tree and hickory on John Draper's line; with his line south 202 poles, to an elm; east 574 poles, to two hackberries and elms; south 457 poles, to a white oak and gum; east 367 poles, to an ash; south 388 poles, to an elm, in Jordan Gibson's line; with his line west 217 poles, to three honey locusts and hickory sapling; south 122 poles to Isaac Bledsoe's corner; two elms and sugar tree with said Bledsoe's line; west 1,048 poles, to the beginning—to have and to hold to the said Jno. Den, with the appurtenances; which said land the said Polly Weatherhead, a citizen of Mississippi as aforesaid, had demised to the said John Den for a term of years which is not yet expired, and ejected him, the said Jno. Den, from his said farm. Therefore, the said Jno. Den complains, that the said Polly Weatherhead on the first day of January, in the year of our Lord 1846, in the district aforesaid, demised the said tract of land, with the appurtenances, to the said John Den, from the day and year aforesaid, for and during and to the full end and term of ten years thence next following, and to be fully completed and ended. By virtue of which demise the said John Den became and was possessed of the said term, to him so granted as aforesaid, and being so thereof possessed, the said Richard Fen afterwards, to wit, on the first day of May, in the year of our Lord 1846, with force and arms entered into the said tenements with the appurtenances, in which the said John Den was so interested as aforesaid, and which is not yet expired, and ejected him, the said John Den, out of his farm aforesaid, and other wrongs to the said John Den, he, the said Richard Fen, then and there did, to the great damage of him, the said John Den, and against the peace and dignity of the United States. Wherefore, the said John Den saith he is injured, and hath sustained damage five hundred dollars; and therefore he sues, &c.

CARUTHERS & BRUN & R. J. MEIGS, *Att'ys.*

Notice.

Messrs. Wm. Buskerville, John White, John Parker, Peter Hanes, Wm. Stuart, Nancy Stuart, Nelson B. Turner, Jacob Galaspie, Peter Brysan, William Parish, Wm. Johnson, Reuben D. Brown, Thomas Saunders, Richard Winn, Thomas Stone, Beverly Head, David Chenault, W. W. Weatherhead, Jno. Weatherhead, George T. Brown, B. F. Sharp, and Francis Rogan, I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment mentioned, or to some part thereof; and I being sued in this action as casual ejector only, and having no claim or title to the same, do advise you to appear at the United States circuit court, to be held for the middle district of Tennessee, at the court-house in Nashville, on the first Monday in March next, and by some attorney of that court, and by a rule of said [court,] cause yourselves to be made defendants in my stead,

otherwise I shall suffer judgment therein to be entered against me, and you will be turned out of possession.

Your ob't servant, RICHARD FEN.

October 20, 1846.

Defendants admitted—Plea.

And at the March term, 1847, the said William Buskerville, John White, Jno. Parker, Peter Haynes, Wm. Stuart, Nancy Stuart, Nelson B. Turner, Jacob Galaspie, Peter Brysan, Benj. Parrish, Wm. Johnson, Reuben D. Brown, Thomas Saunders, Richard Wynn, Thomas Stone, Beverly Head, David Chenault, W. W. Weatherhead, John Weatherhead, George T. Brown, B. F. Sharp, and Francis Rogan, by their attorney, came and admit lease, entry, and ouster, plead not guilty to the plaintiffs' action, and on the trial agree to rely on the title only. And the plaintiff, by attorney, also.

Jury.

And now, to wit, the term first above mentioned, the parties appear, by their attorneys, and thereupon came a jury of good and lawful men, to wit, James Bright, Andrew Buchanan, William B. Robertson, Alfred Bearden, Harvey C. Cowen, Thomas Finch, Charles C. Garvy, William Buchanan, Joseph Newman, Ranson Gwinn, Jonathan Waston, and John C. Rust, who being elected, tried, and sworn the truth to speak upon the issue joined, and having heard the evidence in the cause, the argument of counsel on each side, and the charge of the court, on their oaths, do say—

Verdict.

That the defendants are not guilty of the trespass and ejectment in the declaration mentioned as in pleading they have alleged.

Judgment.

It is therefore considered by the court, that the defendants go hence, &c., and recover against the lessor of the plaintiff their costs by them about their defence in this behalf expended.

Motion for new trial.

And the lessor of the plaintiff, by her attorney, moves the court for a new trial in this cause.

Motion overruled.

Which motion is overruled; and the said lessor of the plaintiff, by her attorney, tenders a bill of exceptions to the opinion of the court, which was received, signed, and sealed by the court, and ordered to be made a part of the record of this cause; and the writ of error having been granted by the honorable John Catron, one of the judges of this court, and bond and security taken, according to law, and the citation

issued, it is agreed by the defendants that service of the citation and allowance of the writ of error is acknowledged by them; which bill of exceptions is in the words and figures following, to wit:

Bill of exceptions.

POLLY WEATHERHEAD'S lessee,
vs.
WILLIAM BASKERVILLE and others.

This cause came on to be tried before the honorable John Catron and Morgan W. Brown, judges, and a jury; when, to maintain the issue on her part, the plaintiff introduced in evidence and read a grant to Anthony Bledsoe, for 6,280 acres of land from the State of North Carolina, described as is stated in the declaration, and proved that she was one of the eleven children of Anthony Bledsoe, deceased, who died in 1788. She then offered to read a copy of the will of Anthony Bledsoe, from the records of the county court of Sumner county, to the reading of which copy the defendants excepted, but the court admitted the copy as proper prima facie evidence for plaintiff.

And suggesting fraud and mistake in the drawing and obtaining the will, and irregularity in the executing or attestation thereof, and insisted that the original will should be produced in court, and the said original will was produced accordingly; a copy of which, with the probate thereon, is hereunto annexed, marked A, and made a part of this bill of exceptions.

In admitting General Hall's evidence, he stated what Isaac Bledsoe and his wife had told him was the true will of Anthony Bledsoe. That is, in substance, that each of the testator's daughters shall have a small tract of land, and that on his (Gen. Hall's) repeating the statements of Isaac Bledsoe and his wife to Rogan, he said that the statement made to Gen. Hall was about what had occurred in substance. Rogan having proved the will in the Sumner county court in 1788 as a subscribing witness thereto, the court held that the will, according to the State laws of North Carolina, was prima facie established, and that a copy might be read by the plaintiff, and which was read accordingly. The court also held, that to make Rogan's proof valid, it must be presumed by the court and jury that Rogan proved all the necessary facts to constitute a good will to pass lands, the same as if Rogan then had proved the same facts before the jury. But that evidence might be let in on the trial to contradict what Rogan was presumed to have proved in 1788, before the Sumner county court, when the will was there recorded. It was proved that Rogan had been dead for many years, and that the other subscribing witnesses were also dead. The copy was offered and admitted, and Gen. Hall's evidence in opposition to the validity of the will adjudged to be proper, and heard to the extent above stated; in the progress of the trial, and one day before the original will was produced, on a subpœna duces tecum, issued on the part of the defendants to the officer having the same in his custody.

The defendants, except the two Stuarts, were proved to have been in possession at the time of bringing this suit. To the reading of the original paper writing called the will, or so much thereof as contains the devise of the lands equally among his children, the defendants objected, and the plaintiff then proved the handwriting of Anthony Bledsoe and of the three subscribing witnesses, and that they were dead. It was also proved by the plaintiff that none of the sons of A. Bledsoe had taken possession of the Greenfield land until after the marriage of plaintiff.

Mrs. Shelby's evidence.

It was proved by Mrs. Shelby that her sister (the plaintiff) had always complained about not getting an equal share of all the lands of her father under the will, and that she returned from Alabama or Mississippi several times, and tried to have suit brought for it.

Dr. Shelby's evidence.

It was proved by Dr. Shelby that James Weatherhead had come into this country several times about this business, and claimed his wife's eleventh part of the land. There was no proof that this claim of wife or husband came to the knowledge of defendants or those under whom they claim.

Malone's evidence.

It was proved by William Malone, that about fifteen years ago a contract was made by the plaintiff or her husband, with an attorney to bring suit in this case, but being unable to give security for a fee of $600 then agreed upon, the suit was not brought and the thing failed; they came to this State several other times on this business, but could never get the suit commenced. It was also proved that James Weatherhead, the husband of the plaintiff, was an honest man, of good common sense, but deficient in energy and resolution. He was a "good easy man," and died insolvent.

Hall's evidence.

Gen. Wm. Hall was introduced by the plaintiff. He proved the boundaries of the grant, dated day of , 1787; that he surveyed the land called for in the grant; the number of acres called for in the grant is 6,280, but it held out 250 acres more; that all the defendants were in the possession of the land called for in this grant at the commencement of this action, except the two Stuarts; that the plaintiff, Polly Weatherhead, was a daughter of Col. Ant. Bledsoe; he thinks in the fall of the year 1799 she intermarried with James Weatherhead, she then being under the age of 21 years. Being cross examined by defendants, states that he was well acquainted with Col. A. Bledsoe, who was killed by the Indians in 1788; that his house stood in about 6 feet of the house of Col. Isaac Bledsoe at the time A. Bledsoe was killed by the Indians; Ant. Bledsoe had a fort upon the Greenfield grant.

Isaac Bledsoe at Bledsoe's lick; the Indians had become very troublesome, and Ant. Bledsoe had broke up his fort and moved into the fort of Col. Isaac Bledsoe. Upon the night of the 20th July, 1788, about the hour of midnight, the Indians approached the house of Isaac Bledsoe, and lay in ambuscade about 40 yards in front of the passage dividing the house, and with a view of drawing out those in the house, caused a portion of the Indians to ride through a lane rapidly by the house; upon which Anthony Bledsoe and his servant man, Campbell, arose and walked into the passage, when A. Bledsoe and Campbell were both shot down. Col. A. Bledsoe was shot with a large ball, which struck within a half inch of his navel, and passed straight through his body, coming out at his back; and from the great pain and rack of misery he suffered from the time he was shot till his death, he was satisfied his intestines were torn to pieces; he died at sunrise the next morning.

The witness states that the firing of the Indians aroused him to his gun. He heard great lamentations in the house of Colonel A. Bledsoe, and he went down to the fort yard to ascertain who was shot; he was informed that Colonel A. Bledsoe and Campbell were mortally wounded, and some said that preparations were being made for writing his will. He, on consultation with others, concluded to put himself in a condition to resist an anticipated attack from the Indians, and returned to their port holes awaiting the attack; and there remained until about the break of day, when he went into the room where Colonel A. Bledsoe lay; he died about one hour afterwards; he did not hear Colonel A. Bledsoe speak on the subject of the will; he understood that he had made his will. Shortly after the burial of Colonel A. Bledsoe he was still living in the fort with Colonel Isaac Bledsoe; he conversed with Isaac Bledsoe, and his wife Caty, on the subject of the will, and they both informed him that shortly after Colonel A. Bledsoe was shot, that they knew from the character of the wound that he must shortly die; Caty went to her husband, Isaac Bledsoe, and told him he must see his brother, and suggest to him that he must die, and that some provision should be made for his daughters; for if he should die without a will they would get no land, and the chief of his estate consisted in lands; that this suggestion was immediately made to Anthony Bledsoe by Caty Bledsoe, in the presence of Isaac Bledsoe; and Anthony Bledsoe said to his brother that, if he would get pen and ink, he would make his will; Isaac Bledsoe said he stepped to the passage and called Clendening from the other room, and he told Clendening that he must come and write his brother's will; that he himself was so confused and agitated that he could not write it himself; they got a table and placed it near him, and while Clendening was writing the caption of the will Anthony Bledsoe observed to Isaac Bledsoe that he wanted him and Colonel Daniel Smith and his wife to act as executors and executrix of his will, as he intended to leave considerable discretion with him in carrying out his will; Anthony Bledsoe was suffering great pain, and Caty Bledsoe got up behind him in the bed, and supported him till the

will was finished. Isaac Bledsoe said to Colonel A. Bledsoe, Mr. Clendening is ready to write your will; how do you want your property disposed of? And Bledsoe stated to Clendening that he wanted to leave a small tract of land to each of his daughters, at the discretion of his executors, and the balance of his lands to his sons, except his land on Holstan and in Kentucky, and them he wished to be sold to raise and educate his children; and the balance of his property to be equally divided between all his children, except the four oldest negroes, and them he wished to remain with his wife till her death, and then to be equally divided among his children. He shortly after saw Hugh Rogan, a subscribing witness to the will, who lived within the fort till 1793, and had a conversation with him in regard to the will of Colonel A. Bledsoe; and I detailed to him what Colonel Isaac Bledsoe and wife Caty had told him about the making of the will, the same that is above specified, and that Hugh Rogan then said it was about what A. Bledsoe said on that occasion in substance. About the time that Isaac Bledsoe was about to lay off the land to the four oldest daughters, witness was present, to wit, in 1793; and witness asked him what he considered would be a small tract of land under the will, when Colonel Isaac Bledsoe observed to him that less than 320 acres would not make a good plantation, and that he intended to give his own daughters 320 acres each; and that he intended to assign to his brother's daughters 320 acres of the best of the land out of the Greenfield survey, and done so. Three of the deeds, marked Nos 1, 2, 3, and made part of this bill of exceptions, to wit, to David Shelby, William Neely, and James Clendening, who had married three daughters, show the land out of the Greenfield tract assigned them. They immediately took possession of the land, all parties being well pleased. Clendening died on his in the year 1822, when it descended to his children; Neely and Penny continued in possession of theirs till they sold, and their assignees yet remain in possession. Shelby continued in possession of his till his death in 1822; Mrs. Sally Shelby sold it, and her assignees continue in possession to this day. Each of the tracts contain about 400 acres.

General Hall further stated that the plaintiff, Polly Weatherhead, married James Weatherhead, he thinks, in the fall of the year 1799, and immediately thereafter took possession of their 320 acres assigned them out of the Greenfield grant. She and husband continued in possession till they sold it to her brother, Henry R. Bledsoe. Their deed, of the 19th of August, 1818, is here exhibited, marked No. 5, as part of this bill of exceptions. Shortly afterwards Weatherhead and wife moved to Mississippi. He never heard her or him put up any claim to any other portion of the Greenfield tract, in opposition to the right of the boys, Henry R., Abraham, and Isaac Bledsoe, nor held any talk with her on the subject. The balance of the grant of the Greenfield tract, in January, 1801, was divided among the boys by the commissioners, as appears by the deed here exhibited, marked No. 7, as part of this bill of exceptions. Isaac Bledsoe took possession, for himself

and brothers, of this land before 1801; he thinks in 1799, but would not be certain; whether before or after the marriage of plaintiff, cannot say; he thinks the guardians of the boys and girls rented the Greenfield tract out from 1796 till Isaac Bledsoe took possession himself, but is not certain; that Abraham Bledsoe continued in possession of the land assigned him till his death, about 1816 or 1817; Henry R. Bledsoe of his till his death in 1822; Isaac Bledsoe of his till he sold to David Chenault, the defendant, and John Patterson. The deeds are here exhibited, all of which is admitted; need not copy them. Since the year 1800, Isaac, Henry R., and Abram Bledsoe, and their assigns, have held the peaceable and adverse possession of said tract of land devised as aforesaid. Previous to the year 1818 there were extensive clearings and improvements upon the land of the boys; many houses erected; and from that period to the present time those clearings have been extended; and some very valuable brick buildings been erected and possessed by some of the defendants. The improvements of this land are extensive, valuable, and permanent, and have been made from the year 1800 up to the present time.

The testimony of General William Hall, continued.

The defendants read the deed from Nathaniel Parker and Mary Parker, dated 30th January, 1796, for 640 acres of land, which lies within the bounds of the Greenfield grant, as proved by the witness, General Hall, who stated that the executor of Anthony Bledsoe made the deed to take up a bond of Anthony Bledsoe to Hugh Rogan. The defendant, Francis Rogan lives on the part of the Greenfield grant conveyed to his father, Hugh Rogan, as aforesaid. The defendants then read the bond of A. Bledsoe to Hugh Rogan, dated the 18th of April, 1783, referred to in the testimony of General Hall, exhibit No. 8, need not be copied. The deed is referred to, exhibit No. 9. The defendants read the deed from the executor and executrix of Anthony Bledsoe, to wit, Isaac and Mary Bledsoe, of the 6th of April, 1700, exhibited No. 10 to William Boman. General Hall proved that he was present when this land was run out; that he saw the bond of Colonel Anthony Bledsoe, which was assigned to William Bowman for this land; and that the executor deeded this land to Bowman in discharge of the covenants of said land, and this land lies within the bounds of the Greenfield grant.

The defendants read the grant of the State of North Carolina, dated 27th June, 1793, for 640 acres, and likewise read the entry of the 14th February, 1784, upon which the grant was founded, exhibited No. 11 and 12, need not be copied. General Hall proved that the grant of Evan Evans lies within the bounds of the Greenfield grant. The defendants read the deed of release from the plaintiff, and Martha Patterson, the wife of James Patterson, to John Patterson; said Pattersons married daughters of James Clendening and Betsey Clendening, dated the 14th day of August, 1846. General Hall proved that this release not only embraced the 320 acres, assigned the plaintiff, but likewise

335 acres of land, lying within the bounds of the Greenfield grant, which is not sued for. A deed from Henry R. Bledsoe to John Patterson, jr., was read, exhibit No. 14. General Hall proved that this was the tract assigned to the plaintiff. The record of the county court of Sumner was read, showing that the guardians of the girls listed the 320 acres of the Greenfield grant from 1794 till their marriage; and the sons of Anthony Bledsoe, by their guardians, listed the balance of the Greenfield grant for the boys. General Hall proved that the taxes were paid accordingly as listed. General Hall proved that the plaintiff had some 8 or 10 children, the oldest about 48 years; some 4 or 5 sons-in-laws; and that she and husband, on several occasions, have been in the county where the land lay, since their removal from the county, as before stated. General Hall proved the handwriting of Anthony Bledsoe to the original will; and likewise the handwriting of the three subscribing witnesses; and that the said Ragan and Clendenen were men of the very highest character for integrity and truth. The deposition of Mrs. Desha, which is to be copied as part of this bill of exceptions, was read by the defendants.

The plaintiff's counsel objected to that part of General Hall's testimony in which he details what he may have heard Isaac and Caty Bledsoe and Hugh Rogan say in relation to the circumstances that attended the making of the will, on the ground that it was hearsay. But the court allowed it to go to the jury, to which the plaintiff excepts. The plaintiff objected to all the testimony tending to prove any thing, or state of facts contrary to the written will, or to show that any thing was omitted or inserted in the will through mistake.

Mrs. Read's evidence.

The defendants introduced Mary Read. She proved that she was well acquainted with Colonel Athony Bledsoe; he was her uncle. In the year 1788 her father, Isaac Bledsoe, was living in the fort near Bledsoe's lick; it was very troublesome times with the Indians. Colonel Anthony Bledsoe had left the Greenfield tract, and was living in one end of my father's house. About midnight of the 20th of July, 1788, after the families had retired to bed, James Clendening announced that he had discovered some Indians near the houses. Colonel Anthony Bledsoe got up and went into the passage with Campbell, it being a clear moon-light night, when Campbell was killed dead, and Colonel A. Bledsoe mortally wounded by a shot from the Indians, the ball having passed directly through his body. I was in the house of Isaac Bledsoe, my father, at the time; there was difficulty in getting light; at length Hugh Rogan went to the kitchen and got fire; immediately after Anthony Bledsoe was shot; he was drawn into the house, having fallen from the shot, when the light came his wound was examined, and discovered to be mortal; he was in extreme agony; no mortal could have suffered more; his intestines were shot and torn; and what is called his caul fat came out to a considerable length; he con-

tinued to suffer immensely till his death, which occurred about sun up next morning; there was great confusion in the room; great lamentation and grief among the family, and those present; with all a momentary attack was expected from the Indians till day. Shortly after the light came Anthony Bledsoe asked my mother, Caty Bledsoe, what she thought of his case? She told him he must inevitably die, and that he ought to make preparation for another world; he seemed to have a great deal of concern about that; after a little my mother suggested to him that four of his oldest children were girls, and if he died without a will, his girls would get none of his lands, and the chief of his estate consisted in lands; and suggested the idea of his making a will, in order to make some provisions for his daughters; he seemed to hesitate, and said he did not know who they would marry, but said in the presence of my father and mother, and others, that if they would have it wrote, that he would make a will.

I distinctly recollect that he said, that he wanted his Kentucky and Holston land sold, and the proceeds applied to the education of his children; that he wanted a small tract of land given to his daughters at the discretion of his executors; the balance of his lands to be equally divided among his sons; that the four oldest negroes to be kept by his wife during her life, and the balance of the property to be equally divided among all his children. James Clendening approached a table near where he lay, and commenced writing the will. I did not hear what he said when the will was writing, if he said any thing. I was present all the time, from the time the will was first suggested to him, to the time of his signing his will; heard him make no other disposition of his estate, but that which is detailed above. My mother got behind Ant. Bledsoe and held him up with her knees, he talked but little, was in extreme agony all the time; when he talked, he talked sensibly up to his death. I do not know whether the will was read over to him or not; he signed his name to it. My father, Isaac Bledsoe, was standing by him when my mother suggested to him the propriety of making the will, was present during the whole time of the writing of the will, and was over him when he died. I was about ten years of age at that time; the occurrences of that night made a deep and lasting impression on my mind; I recollect what was said and done more distinctly than transactions of late date, and this has been impressed upon my mind by conversations with others since. James Clendening, the drawer of the will, shortly afterwards married one of the daughters of Col. Ant. Bledsoe; he and Hugh Rogan resided in my father's fort some *for* or five years afterwards; my father was appointed an executor with the widow previous to his being killed by the Indians in 1793, pursuant to the request and will of my uncle, he assigned to David Shelby, who had married Sally, the oldest daughter, a small tract of land, the boundaries of which contain about four hundred acres, as appears by the deed; the other three daughters, to wit, Betsy, who married James Clendening; Rachel, who had married William Neely; Susan, who had married William Penny, received and was assigned to them their portions, as appears by their

respective deeds signed by the executors in the year 1793, containing four hundred acres of land, all of which was taken out of the Greenfield survey, covered by the grant of 1787, exhibited by the plaintiff in the cause. In addition to these four children, Col. A. Bledsoe at his death *haad* the following, Thomas and Anthony, both of whom under age, were killed by the Indians in the year 1794, Anthony in April, and Thomas in October, 1794. Isaac, Polly, Abram, Henry, and Prudence, who was born after the death of her father, being eleven in number. David Shelby, James Clendening, William Neely, William Penny, Joseph Sewell, and James Weatherhead, all married daughters of Col. A. Bledsoe, and were smart business men, and some of them married fifty or sixty years ago. James Weatherhead married the plaintiff, Polly, she thinks in the fall of 1799, and the next year took possession of the 320 acres laid off to her out of the Greenfield tract, and continued in possession for many years, till they sold to Henry R. Bledsoe, her brother, as appears by their deed of 19th August, 1818, which is exhibited, marked No. 5. Sewell and his wife Prudence got a like portion of land assigned them, from the southeast corner of the grant; all of which portions they possessed and enjoyed till they were all sold, except Clendening's lot, which descended to his heirs. Clendening died in 1822; Isaac Bledsoe took possession of the balance of the Greenfield tract for himself and brothers about the year 1800, she is not positive whether it was before or after, and that portion was divided between them, as appears by the report of the commissioners in 1801.

Parker's evidence.

Nathaniel Parker, a witness for defendants, proved that he has always resided near the Greenfield tract of land since the year 1796. That Isaac, Henry R., and Abram Bledsoe, and the defendants claiming under them, have had the possession of the lands sued for since the year 1799 or 1800, cultivating and improving the lands, building houses, &c., since that period. That James Weatherhead married the plaintiff in the fall of 1799. That they took possession of the 320 acres of land assigned the plaintiff, he thinks in the year 1800; that they were close neighbors of his; was intimate with them; James Weatherhead worked on his house; Penny, who married a daughter of Col. Anthony Bledsoe was his brother-in-law; he was well acquainted with Joseph Sewell, James Clendening, David Shelby, and William Neely, who married likewise daughters. They were all smart men. Weatherhead an acting justice of the peace for Sumner county for many years; David Shelby was the guardian of Polly Bledsoe, the plaintiff, and was the clerk of the county court of Sumner for some thirty years, and pursued his own interest closely. That during all this intercourse and acquaintance, he never heard any claim on their part upon any portion of the Greenfield tract assigned the boys.

Carr's evidence.

John Carr, a witness for defendants, proved the same facts in substance proved by Nathaniel Parker.

It was proved by competent testimony, which the plaintiff does not require to be copied into this bill of exceptions, that a division was made of the residue of the Greenfield survey after taking out the shares assigned the daughters, the land conveyed to Rogan and Bowman, and the land covered by the Evan Evans' grant, between the three remaining sons of Anthony Bledsoe, by partition in a court of record, and that possession was continued under this division, and the deeds made under it, till the bringing of this suit, there being a regular chain of title from said partition, which was made in 1801.

It was further proved, that possession had been taken by said sons jointly in the year 1800, adversely. The plaintiff and her husband having in that year also taken possession of the 320 acres laid off to them by [the] commissioners, no written evidence of which was adduced.

M. Gavock and Hickman's evidence.

It was proved by Jacob M. Gavock and Thomas Hickman, that the records of the district court of Miro district on the equity side thereof, were burned and destroyed in the year 1796; and it appeared by competent proof, that this was the court having jurisdiction of the partition and division of estates and other matters in equity in the county of Sumner, where the land in controversy lies, from the time of the making of the will to the date of the destruction aforesaid.

It is admitted that the land in controversy exceeded the sum or value of two thousand dollars.

Charge of court.

Whereupon the court charged the jury as follows:

We are first of opinion that parol evidence may be heard to the following extent, in reference to the devises in the will of Anthony Bledsoe: The claim "to each of my daughters a small tract of land" we regard as directly conflicting with the clauses "my lands and slaves to be equally divided amongst my children." It is contended by the plaintiffs that by these devises the daughters *the daughters* not only take equally with the sons the lands of the testator, but that an additional small tract is also given to each daughter. From the then state of the law of descents, which excluded the daughters, and from the number and circumstances of the testator's family and estates, we think this construction of the conflicting clauses cannot be adopted; but, that the clause which gives to each of the daughters a small tract of land must be regarded as unmeaning and useless. That it stands in conflict with an equal division is undeniable. The question, then, is, whether this inconsistency on the face of the will authorizes proof extrinsic of the recorded paper to shew that it was the intention and will of Col. Bledsoe to give the daughters each a small tract of land only, and not an equal share

as contended by the defendants. The distinct question for the jury to try is, whether Anthony Bledsoe's will was that his daughters should each have a small tract of land and no more. To find this to be the true will, the jury must find that the clause "my lands to be equally divided amongst my children" was not Anthony Bledsoe's will, but inserted without his instruction or knowledge, and contrary to his intention, wish, and will.

A paper writing, purporting to be a man's will, or deed, executed and proved according to the forms of law, shall always be deemed such, unless positive proof of the contrary is made out clearly. In the case of a devise, it must be shown that the testator's will and intention was different at the time of making the instrument, and that that will and intention was not embodied in the writing, either by fraud or mistake at the time; or, in other words, that that which he positively willed was wrongfully set down, either designedly, which would be fraud, or not designedly, which would constitute mistake; but both standing upon the same principle in law and in fact, in an issue of devastavit vel non; and on these principles the jury will proceed to consider the case.

The witnesses [state] that *that* Col. Bledsoe was shot in July, 1788, on the premises in dispute, where his family resided, and where his wife and children continued to reside for many years thereafter; that he was shot by the Indians through the centre of the body, and his bowels torn to pieces. He was in his own fort, between two log houses, in a passage, where he received the mortal wound and fell, another (his servant) being killed at the same fire; that he was carried into one of the houses. This was about midnight, and he died after daylight next morning, being in extreme pain, and writhing much all the time after he received the mortal wound up to the time when he died. During this time Isaac Bledsoe, and especially the wife of Isaac, proposed to their dying brother to make a will; the main intention of which was, to make a provision for his daughters out of his lands, they being cut off by the statute of descents. That at the time there was extreme distress in the house; various women, children, and men in it, and much confusion; that James Clendenen (who was in the fort with many others) was sent for (he being on guard) to write the will, and did so, at the bedside of the wounded testator; that the will was executed before daylight. These facts we understand to be undisputed; but whether they are or are not correctly stated the jury will judge, our object being to state only such an outline of the facts as to make the charge to the jury intelligible, as regards the application of the rules of evidence to the case submitted to the jury. They will take into consideration the situation of the testator, and all the circumstances that surrounded him, at the time he was making his will, that is, during the time that Clendening was writing *of* it, all that was said to him after he was shot and before Clendenen commenced writing the will, and all that the testator said and did during these times, and all that was said to him after Clendening commenced writing the will and before it was completed,

in regard to its contents. The jury will next consider the conjoint acts of Polly Weatherhead and her husband, and the acts of all the other devisees of Anthony Bledsoe, in instances where the whole of the devisees (including said Polly and her husband) [are] concerned in dividing the estate of the said testator, and see how far they mutually recognised the true will to be, that each of the daughters should have a small tract of land, but not an equal division by the partition they actually did make amongst each other; and especially how far Polly concurred in these acts of partition, and in a mutual occupation of the lands each devisee took. These acts are evidence that is strengthened by the lapse of time, and of long acquiescence on the part of Polly, if the acts of partition were accompanied by long adverse possession, each devisee holding adversely, and for her or himself, the parcel of land partitioned to him or her, say for thirty or forty years, under the partition.

If the jury find from the evidence that the will of the testator was that each of the daughters should have a small tract of land, and no more, and find that Polly had partitioned to her the 320 acres, out of the south side of the Greenfield tract, as such small tract, then she has no right to recover in this action.

And as to the fact of a legal and binding partition among the devisees of Anthony Bledsoe, we think, and so instruct the jury, that if they believe the facts given in evidence, then they would be authorized to presume that a legal partition had been made, the evidences of which had been lost by the accidents of time, and that Polly Weatherhead had legally received her share of the lands of the testator. In regard to the statute of limitations, the jury is instructed that, if Polly Weatherhead, by her guardian, had a joint possession of the land in dispute with her brothers, all claiming as tenants in common, and that such joint possession continued up to the time of Polly's marriage with James Weatherhead, then the act of limitation has not barred her right of recovery, if she sued within three years after her husband's death.

The jury is further instructed, that if they find for the plaintiff they must find for one-eleventh part of so much of the land sued for as was partitioned to the brothers of Mrs. Weatherhead, unless the plaintiff has relinquished her right to some part of the same.

In regard to that part of General Hall's evidence where he deposed as to what Isaac Bledsoe and his wife told him respecting the intention of the testator, and which statements of Isaac Bledsoe and his wife General Hall repeated to Hugh Ragan, the subscribing witness to the will, and who (with Thomas Maury, another subscribing witness) proved the will in the ordinary form in 1788, and which statement was affirmed by Rogan to be substantially accurate, the jury will consider the evidence as intended only to impair the proof of Ragan in so far as the alleged mistake in the will is assumed to exist; but General Hall's evidence being competent, the jury may ascertain how far it comes in support of Mrs. Read's statement, and the acts of the plaintiff and her

husband, in affirmance of the mistake alleged to have been made by Clendenen in drawing the will, if such acts there be.

To which charge of the court the plaintiff, by her counsel, excepted.

The jury then rendered a verdict for the defendants; and the plaintiff then moved the court for a new trial, which was refused. To all which decisions of the court, in the admissions of the evidence excepted to, and the charge of the court to the jury, and the refusing a new trial, the plaintiff excepts, and prays his bill of exceptions to be signed, sealed, and made a part of the record, which is done accordingly.

J. CATRON, [L. S.]
M. W. BROWN. [L. S.]

Grant to A. Bledsoe for 6,280 acres.—Exhibit.

STATE OF NORTH CAROLINA.—No. 51.

Know ye, that we have given and granted unto Anthony Bledsoe, one of the commissioners for laying off the lands allotted the officers and soldiers of the continental line, a tract of land containing 6,280 acres, lying in the county of Davidson, on both sides of Bledsoe's creek, beginning at a hackberry and white oak, on the east bank of Bledsoe's creek, corner to Isaac Bledsoe's land; running thence with his line north 32 degrees west, 60 poles, to a small red oak and dogwood, corner to Robert Desha's land; with his line north 218 poles, to a hickory and elm, in Robert Steel's line; with his line east 162 poles, to a black walnut, north 320 poles, to an ash and black walnut, west 30 poles, to a hickory and elm sapling, corner to Jno. Morgan; with his line north 580 poles, to a mulberry and black oak, east 226 poles, to a sugar tree and hickory in Jno. Draper's line; with his line south 202 poles, to an elm, east 574 poles, to two hackberries and elm, south 459 poles, to a white oak and gum, east 367 poles, to an ash, south 388 poles, to an elm in Jordan Gibson's line; with his line west 217 poles, to three honey locusts and a hickory sapling, south 122 poles, to Isaac Bledsoe's corner, two elms and a sugar tree; with said Bledsoe's line west 1048 poles, to the beginning; to hold to the said Anthony Bledsoe, his heirs and assigns forever. Dated the 8th day of October, 1787.

RD. CASWELL.

J. GLASGOW, *Sec.*—No warrant or survey.

STATE OF TENNESSEE, *ss:*

I, John S. Young, Secretary of State in and for said State, do hereby certify, that the foregoing is a true copy of the grant, No. 51, from the State of North Carolina to Anthony Bledsoe, for 6,280 acres of land, and dated the 8th day of October, 1787, as taken from a certified copy on file in my office.

Given under my hand, at office, in Nashville, this 28th August, 1846.

JNO. S. YOUNG.

said creek three times, to a red oak and white oak; thence west 190 poles to a hackberry; thence north two degrees west sixty poles to a small red oak and dogwood; thence 195 poles to a stake; thence east 220 poles to the beginning, containing 320 acres more or less.

To have and to hold the said tract of land, with all the appurtenances thereto belonging, to the said James Clendening, his heirs and assigns forever; and the said Mary Parker doth, for herself, her heirs, executors and administrators, covenant and agree, to and with the said James Clendening, to warrant and forever defend the within granted premises unto the said James Clendening, his heirs and assigns, against the claim of all person whatsoever; the said land is part of a tract of 6,280 acres, granted to the aforesaid Anthony Bledsoe, by letters patent bearing date the 8th day of October, in the year of independence 12, 1787.

In witness whereof the said Mary Parker hath hereunto set her hand and affixed her seal the day and year above written.

MARY PARKER. [SEAL.]

Signed, sealed, and delivered in presence of—

WM. MORGAN,
JEREMIAH MORGAN,
ROBERT STEEL.

Registered and examined 22d December, 1793.

G. WINCHESTER, *Register*.

STATE OF TENNESSEE, *Sumner county*.

I, John Bruce, register of said county, do hereby certify, that the within and foregoing contain a full, true, and perfect transcript of the deed from Mary Parker, executrix of Anthony Bledsoe, deceased, to James Clendening, as the same now appears of record in my office, in book D, page 33, this 1st day of September, A. D. 1847.

J. BRUCE, *Register, S. C.*

Exhibit No. 3.

This indenture, made this 13th day of September, in the year of our Lord 1793, between Mary Parker, executrix, and the only surviving executor of Anthony Bledsoe, deceased, of Sumner county, and territory southwest of the Ohio, of the one part, and William Neely, of the county and territory aforesaid, of the other part, witnesseth: That the said Mary Parker, pursuant to the last will and testament of the said deceased, hath given, granted, aliened, enfeoffed, and confirmed, and by these presents do give, grant, alien, enfeoff, and confirm, unto the said William Neely, all that tract or parcel of land, situate in the county of Sumner aforesaid, and on the waters of Bledsoe creek: Beginning at an elm and horsebean, the beginning to a tract of 640 acres, conveyed by the executors of the said deceased, to William Bowman; running thence west 176 poles to two locust trees, dogwood, and hickory, corner to David Shelby; thence with the said Shelby's line north 290 poles, passing his northeast corner twenty poles, to a stake; thence east 126

poles to a stake in the west boundary of said tract, conveyed to Wm. Bowman; thence with the line of the same south 290 poles to the beginning, containing 320 acres more or less.

To have and to hold said tract of land, with all the appurtenances thereto belonging, to the said William Neely, his heirs and assigns forever; and the said Mary Parker, as executrix of the said Anthony Bledsoe, and by virtue of his last will and testament, covenant, to and with the said William Neely, his heirs and assigns, against the claim or claims of all persons whatsoever.

In witness whereof the said Mary Parker hath hereunto set her hand and affixed her seal, the day and year first above written.

MARY PARKER. [SEAL.]

Signed, sealed, and delivered in presence of—
JAMES CLENDENING,
H. HICKS.

Registered and examined 22d December, 1793.
G. WINCHESTER, *Register*.

STATE OF TENNESSEE, *Sumner county*.

I, John Bruce, register of said county, do hereby certify, that the within and foregoing contain a full, true, and perfect transcript of the deed from Mary Parker, executrix of Anthony Bledsoe, deceased, to Wm. Neely, as the same now appears of record in my office, in book D, page 34, this 1st of *of* September, A. D. 1847.

J. BRUCE, *Register, S. C.*

Exhibit No. 5.—Exhibit No. 5.

This indenture, made and entered into this 19th day of August, in the year of our Lord 1818, between James Weatherhead and his wife Polly, of the county of Sumner, and State of Tennessee, of the one part, and Henry R. Bledsoe, of the same county and State aforesaid, of the other part, witnesseth: That the said James Weatherhead and his wife Polly, for the valuable consideration of two thousand eight hundred and twenty dollars, to them in hand paid by the aforesaid Henry R. Bedsoe, enfeoff, hath bargained, sold, and by these presents doth bargain, sell, convey, and confirm, and deliver unto him, the said Henry R. Bledsoe, a certain tract or parcel of land, lying and being in the county and State aforesaid, on the east fork of Bledsoe's creek, containing by estimation 318 acres, being a part of a tract of land of 6,280 acres, originally granted to Anthony Bledsoe, late of Sumner county, and State of Tennessee, deceased, known by the name of the Greenfield survey, being the dower of land laid *of* by the commissioners to the aforesaid *to the aforesaid* Polly Weatherhead, late Polly Bledsoe, bounded and butted as follows, to wit: Beginning at a black gum, corner of the aforesaid Greenfield survey; thence east 100½ poles to a stake in Ramsay's line; thence south 64½ poles to A. Holmes' northeast corner to a stake; thence west 264 1⅝ of a pole to a walnut and two red oaks;

thence north 260 poles to the east fork of Bledsoe's creek; thence up the several meanders of the said creek to the mouth of the aforesaid H. R. Bledsoe's spring branch of the said branch to the said Bledsoe's line; east with said line, crossing east fork to an elm and red oak in Ramsay's line; thence south 280½ poles to the beginning.

To have and to hold the above described land, with all its rights and appurtenances thereunto belonging, to him, the said H. R. Bledsoe, his heirs, executors and administrators, or assigns; and we, the aforesaid James and Polly Weatherhead, doth for ourselves, our executors, or assigns, do agree to warrant and forever defend unto him, the said Henry R. Bledsoe, his heirs, executors, administrators, or assigns, against all lawful claim or claims whatsoever.

In witness whereof we have hereunto set our hands and affixed our seals, this day and date above written.

JAMES WEATHERHEAD, [SEAL.]
POLLY WEATHERHEAD. [SEAL.]

Signed, sealed, and acknowledged in presence of us—
JOHN HALL,
J. RUTHERFORD,
J. H. COAN.

STATE OF TENNESSEE, *Sumner county court, August term*, 1818.

The within deed of bargain and sale, between James Weatherhead and Polly Weatherhead, his wife, of the one part, and Henry R. Bledsoe, of the other part, for three hundred and eighteen acres of land, was duly acknowledged in open court by the bargainers; and Polly Weatherhead, his wife, being examined separate and apart from her said husband, acknowledged the signing and sealing of the same to be her free and voluntary act and deed, without any threats or coercion from her said husband, and that she fully relinquishes her right of dower; wherefore the deed is ordered to be registered.

A copy—test, DAVID SHELBY,
Clerk of Sumner county court.

Registered and examined, 16th October, 1818,
JAMES DOUGLASS, *Register*,
By A. STARFUD, *D. R.*

STATE OF TENNESSEE, *Sumner county.*

I, John Bruce, register of said county, do hereby certify, that the above and foregoing contain a full, true, and perfect transcript of the deed from James Weatherhead and Polly Weatherhead, his wife, to Henry R. Bledsoe, as the same now appears of record in my office in book O, page 347, this 9th day of September, 1847.

J. BRUCE, *Register Sumner county.*

Exhibit No. 7.—Exhibit No. 7.

We, the undersigned, being appointed by an order of Sumner county court, dated October term, 1800, to divide and appropriate to the heirs of

Anthony Bledsoe, deceased, that part of his estate which has not been heretofore laid off and appropriated, called and known by the name of the Greenfield tract of land, have, in pursuance thereto, met on the premises, and after being duly sworn to do justice between the claimants, proceeded to view and explore the land, and then to divide and appropriate to each claimant as follows, to wit: To Isaac Bledsoe we assign 168 acres, part of 558 acres of land, including the improvements made by, and occupied by, the said deceased immediately preceding his death, which lies detached from the other part of said tract unappropriated, and to be bounded as follows—beginning at the head or source of the spring belonging to said improvements, or known by the name, or usually called, the Greenfield spring, and running thence north 52° west, 58 poles, to a peach tree, west 46 poles, south 94 poles, west 44 poles, to the line of a tract of 640 acres in the said Greenfield survey, formerly laid off to Hugh Rogan with the line of the same north 210 poles, to the northeast corner dogwood and ash; thence east 274 poles, to the line of a 320 acre tract laid off for Polly Weatherhead, a daughter of the said deceased, and with the line of the same south 35 poles; thence west 76 poles, thence south 27° west, 136 poles, to the beginning. And we also assign to the said Isaac Bledsoe one-third part of the remainder of said tract not appropriated, except about 437 acres, which lies detached to itself, joining a 320 acre tract laid off in the southwest corner of the original survey for Prudy Bledsoe, the younger daughter of the deceased, which third part is to lie in the west end of said original survey, joining the west boundary, and to be divided by a north and south line, extending from the north boundary of the said original survey to where it intersects the line of some other tracts already laid off. And to Abraham Bledsoe we assign one other third part of the said 558 acres of land above mentioned, to be bounded as follows—beginning at the head of the spring as aforesaid, running with the lines of the part assigned to Isaac Bledsoe, north 27° east, 136 poles, east 76 poles, to the line of the tract laid off for Polly Weatherhead, and with the same south 94 poles, to the southwest corner of said tract, then east 28 poles to the northwest corner of a 640 acre tract, laid off in said original survey to William Bowman; with the line of the same south 173 poles to the northeast corner of a 320 acre tract, laid off for Rachel Neely, another daughter of the deceased; along the line of the same 60 poles, then north 37° west, 184 poles, to a stake in the lane; thence north 87° east, five poles, to the beginning. And we likewise assign to the said Abraham Bledsoe, one-third part of all the unappropriated land in the said Greenfield tract, except the 437 acres, or thereabouts, lying joining Prudence Bledsoe's, as aforesaid, which third part is to join the north and south line which shall divide Isaac Bledsoe's proportion of the last division or dividend, and to run east along the north boundary of the original survey, so far as to include one-third part as aforesaid, with the exception before mentioned, and then south to where it intersects the line of other lands before set apart, and west to the said north and south line. We likewise assign to Henry Bledsoe the residue

or balance of the said 538 acres of land, being one-third thereof, to be bounded as follows—beginning at the head of said spring as aforesaid, and running with the line of the part or portion assigned to Isaac Bledsoe, north 52° west, 58 poles to a peach tree, west 46 poles, south 94 poles, west 44 poles, to the line of a 640 acre tract in the said original survey, formerly laid off for Hugh Ragan: then south 310 poles to the line of a 320 acre tract of land laid off for Polly Shelby, the elder daughter of the deceased, and along the line of the same 120 poles, to the northeast corner of the said tract; thence north 20 poles to the northwest corner of the aforesaid tract laid off for Rachel Neely, and along the line of the same east 117 poles, to Abraham Bledsoe's corner in the said line as above mentioned, and with the said Abraham's line north 37° west, 185 poles, to a stake on the line; thence north 87° east, five poles, to the beginning; as also we assign to the said Henry Bledsoe one-third part of the unappropriated land in the said Greenfield tract, excepting the 437 acres, or thereabouts, joining Prudy Bledsoe, as aforesaid, which third part is to lie in the northeast corner of the original survey, and to join the tract laid off for Polly Weatherhead, on the north and the eastern boundary of Abraham Bledsoe's last dividend, which is to be a north and south line, extending from the north boundary of the original survey to *which* it shall intersect the lines of lands previously allotted to some persons; there being other lands belonging to the estate of said deceased, we think proper to let the 437 acres, or thereabouts, above mentioned, remain undivided until these other lands are divided between the said heirs.

Given under our hands this fifth day of January, 1801.

JAMES HARRISON,
DAVID HENRY,
GEORGE GELESPIE,
ROBERT STUT.

Registered and examined, June 25, 1803.

DAVID WELSON, *Reg'r.*

STATE OF TENNESSEE, *Sumner county.*

I, John Bruce, register of said county, do hereby certify, that the above and foregoing contain a full, true, and perfect transcript of the division of the real estate of Anthony Bledsoe, deceased, as the same now appears of record in my office in book H, page 355, this first day of September, A. D. 1847.

J. BRUCE, *Reg'r Sumner county.*

Exhibit No. 8.—Exhibit No. 8.

Know all men by these presents, that I, Anthony Bledsoe, of the county of Sullivan, am held and firmly bound unto Hugh Ragan, of the county of Surry, in the penal sum of two hundred pounds specie, North Carolina currency; to which payment, well and truly to be made to the said Hugh, his heirs, executors, administrators, or assigns, I bind myself, my heirs, executors, administrators, and every of them, jointly

and severally, firmly by these presents. Sealed with my seal, and dated the 18th day of April, anno domini 1783.

Now, the condition of the above obligation is such, that the above bound Anthony Bledsoe, his heirs, executors, administrators, do make, or cause to be made, to the said Hugh *Hogan*, his heirs, executors, administrators, or assigns, a good sufficient title to 640 acres of good land, between the French Lick on Cumberland river and Goose creek, to be well watered, with at least one good spring, so soon as a land office is opened to the lands on Cumberland [river] in this State, and titles obtained, with a reasonable time for to transfer the same, then this obligation to be void, or otherwise to remain in full force and virtue.

A. BLEDSOE. [SEAL.]

Sealed and delivered in presence of—
A. TATUM,
DAN. MACDONALD.

STATE OF NORTH CAROLINA, *Sumner co'y court, January term*, 1795.

Bond from Anthony Bledsoe, deceased, to Hugh Ragan, is exhibited to court, and ordered to be recorded.

Recorded and examined, 10th July, 1795.

STATE OF TENNESSEE, *Sumner county.*

I, William S. Munday, clerk of the county court of said county, do hereby certify, that the within contains a full, true, and perfect transcript of a bond from Anthony Bledsoe, deceased, to Hugh Ragan, deceased, as now appears of record in my office.

Witness my hand at office, this 9th day of September, 1747.

WM. S. MUNDAY, *Clerk.*

Exhibit No. 9.—Exhibit No. 9.

This indenture, made this 30th day of January, in the year of our Lord 1796, between Nathaniel Parker and Mary, his wife, executors to Anthony Bledsoe, deceased, of the county of Sumner, and territory of the United States, south of the river Ohio, of the one part, and Hugh Ragan, of the same county and territory aforesaid, of the other part, witnesseth: For that whereas, pursuant to act of Assembly in such case made and provided, authorizing executors or administrators to make conveyances of land upon bonds, covenants, or contracts, of landed nature; now, for the consideration of two hundred pounds, expressed in a covenant given by Anthony Bledsoe, in his lifetime, on the 18th day of April, 1783, to the aforesaid Hugh Ragan, for the conveyance of 640 acres of land, to lie between the French Lick and Goose creek. Now we, the said Nathaniel Parker and Mary, his wife, executors as aforesaid, hath given, granted, bargained, sold, released, alienated, enfeoffed, conveyed, and confirmed, unto the said Hugh Ragan, and do, by these presents, give, grant, bargain, sell, release, alien, enfeoff, convey, and confirm, unto him, the said Hugh Ragan, and his heirs and assigns, a certain tract of land in consideration of the covenant given by Anthony

Bledsoe aforesaid, lying and being in the county of Sumner, and territory aforesaid, containing 640 acres, be the same more or less; beginning at three sycamores, standing on the east bank of Bledsoe creek, running thence west 81 poles, to a stake in Robert Stut's line, standing between a hickory and mulberry; thence with Stut's line north 318 poles, to a walnut; thence east 338 poles, to a dogwood and ash on the side of an old path; thence south 298 poles, to a stake in the line of the north boundary of a tract of 320 acres, conveyed by the executors of Anthony Bledsoe, deceased, to David Shelby; thence west 257 poles, to the northwest corner of a tract conveyed by the executors aforesaid to Wm. Penny; thence, with said Penny's line, south 20 poles, to the beginning, with all and singular the remainders, reversion, and reversions, mines, minerals, woods, waters, and water-courses; to have and to hold the aforesaid tract of land, and bargained premises, together with all rents, issues, profits, hereditaments, and appurtenances, to the same belonging, or in any wise appertaining, to the only proper use, benefit, and behoof of him, the said Hugh Ragan, his heirs and assigns, forever; and the said Nathaniel Parker and Mary, his wife, executors aforesaid, do hereby warrant and defend the aforesaid premises from and against the right, title, interest, claim, and demand, of all and every person or persons whatsoever, pretending to claim the same by title, or any part thereof.

In witness whereof, the said Nathaniel Parker, and Mary, his wife, hath hereunto set their hands, and affixed their seals, the day and year above written.

NATHANIEL PARKER, [SEAL.]
MARY PARKER. [SEAL.]

Signed, sealed, and delivered in presence of—
HENRY LYON,
PETER LYON,
JOHN LYON.

Sumner county, July term, 1796.

The within deed, from Nathaniel Parker, and Mary Parker, executors of A. Bledsoe, was proved by Henry Lyon; let it be registered.

DAVID SHELBY.

STATE OF TENNESSEE, *Sumner county, register's office.*

The within deed is duly registered in Book D, page 371, September 19th, 1797.

DAVID WILSON, *Register.*

Exhibit No. 10.—Exhibit No. 10.

This indenture, made and agreed upon this 6th day of April, in the year of our Lord 1799, and in the 14th year of our American independence, between Col. Isaac Bledsoe and Mary Bledsoe, both executors to Col. Anthony Bledsoe, deceased, of the one part, and William Bowman, all of the State of North Carolina, and county of Sum-

ner, witnesseth: That for and in consideration of the sum of one hundred pounds, current money of the State aforesaid, to us in hand paid, the receipt of the same we do hereby acknowledge, we have here, by these presents, granted, bargained, and sold, to the said William Bowman, all that tract, piece, or parcel of land, situate, lying, and being in the county aforesaid, on the waters on Bledsoe's creek, and part of the said Anthony Bledsoe's large survey of 7,000 acres, known by the name of Greenfield, and bounded as follows, to wit—beginning at an ironwood and elm on Alexander Neely's north boundary, running thence north 453 poles, to a stake; thence east 227 poles, to a stake, joining or near Gibson's pre-emption; thence south 453 poles, to said Neely's northeast corner; thence along his west line 227 poles, to the beginning, containing 640 acres; and the said Bowman, or his heirs, executors, administrators, or assigns, is to have and to hold the said tract, or parcel of land already mentioned, with all and every of its appurtenances, to wit, woods, ways, water-courses, hereditaments, and improvements, appertaining to the same. And the said Isaac Bledsoe, and Mary Bledsoe, widow of the said Anthony Bledsoe, deceased, do, by these presents, and in behalf of themselves, their heirs, executors, and administrators, sell, alien and convey, enfeoff and confirm, unto the said Bowman, all the above mentioned parcel of land already described, to be for the only proper use and behoof of the said Bowman, or his heirs, executors, administrators, or assigns, for ever; and we, the said Isaac Bledsoe and Mary Bledsoe, do hereby warrant and forever defend the said messuage or parcel of land to the said Bowman, his heirs, executors, administrators, or assigns, from us, our heirs, executors, administrators, or assigns, of the said Anthony Bledsoe, deceased, and from all lawful claims whatever.

In witness whereof we have hereunto set our hands and seals the day and year first above written.

ISAAC BLEDSOE, [SEAL.]
MARY BLEDSOE. [SEAL.]

STATE OF NORTH CAROLINA, *Sumner county*, *April term*, 1790.

Deed from Isaac Bledsoe and Mary Bledsoe, executor and executrix of Anthony Bledsoe, deceased, to William Bowman, is duly acknowledged.

A copy—Test, DAVID SHELBY, *Clerk of said court.*

STATE OF TENNESSEE, *Sumner county.*

I, John Bruce, register of said county, do hereby certify, that the within and foregoing contain a full, true, and perfect transcript of the deed from Isaac Bledsoe and Mary Bledsoe to William Bowman, as the same now appears of record in my office in book I, page , the 6th September, 1847. J. BRUCE, *Register S. C.*

Exhibit No. 13.—Exhibit No. 13.

This indenture, made this 14th day of August, in the year 1846, between Polly Weatherhead and Martha A. Patterson, of the county of

Sumner, and State of Tennessee, of the one part, and John Patterson, junior, of the county and State of Tennessee, of the other part, witnesseth: That the said Polly Weatherhead and Martha A. Patterson, for, and in consideration of the sum of fifty dollars, by the said John Patterson, junior, paid, the receipt whereof is hereby acknowledged, hath this day bargained, sold, and released, unto the said John Patterson, junior, all right, title, claim, and interest, that we, the said Polly Weatherhead and Martha A. Patterson, hath, or may have, to the following described tracts of land, lying and being in the county of Sumner, and State of Tennessee, on the waters of the east fork of Bledsoe's creek, a part of the Greenfield survey, beginning on an ironwood or hornbeam, David Chenault's corner, in Francis Ragan's north boundary line; thence east with said Ragan's line, to Isaac Parker's corner; thence east with Parker's line to Chenault's corner; thence east with Chenault's line to said Chenault's corner; thence south with said Chenault's line to said Chenault's corner; thence with said Chenault's line into George T. Brown's northwest corner; thence east with said Brown to his northeast corner; thence north with Richard Winn's line to Margaret Chapman's line; thence west with M. Chapman's line to her corner; thence north with her line to her northwest corner; thence east with her line to John Wiseman's line; thence north to H. Malone's line; thence west to H. Malone's southwest corner; thence north to R. D. Brown's line; thence with said Brown's line west, to two sycamores in Brown's line, on the north bank of the east fork; thence west, with east fork of Bledsoe's creek, to Francis Ragan's line; and with said Ragan's line to Benjamin Parish's southwest corner; thence north with Parish's line to N. B. Turner's line; thence west with said Turner's line to his corner; thence south with said Turner's line to his corner; thence west with said Turner's line to John Parker's line; thence with said Parker's line to David Chenault's line; thence south with said Chenault's line to the beginning. The above described land having been purchased by the said John Patterson, junior, from sundry persons, this is a release deed, in which we, the said Polly Weatherhead and Martha A. Patterson, release all right, title, claim, and interest that we have, to all the land owned by the said John Patterson, junior, on Bledsoe's creek and its waters.

In witness whereof we have hereunto set our hands, the day and date above written.

POLLY WEATHERHEAD, [SEAL.]
MARTHA A. PATTERSON. [SEAL.]

Attest: J. H. PATTERSON,
V. L. PATTERSON,
MARY E. PATTERSON.

Exhibit No. 14.—Exhibit No. 14.

This indenture, made this 7th day of September, 1821, between Henry R. Bledsoe, of the county of Sumner and State of Tennessee, of the one part, and John Patterson, jr., of the county of Smith and

State aforesaid, of the other part, witnesseth: That for and in consideration of the sum of $5,000 to me in hand paid by the said John Patterson, jr., the receipt whereof is hereby acknowledged, I, the said Henry R Bledsoe have this day bargained and sold unto the said John Patterson, a certain piece or parcel of land, lying and being in the county of Sumner and State aforesaid, on the east fork of Bledsoe's creek, a part of the Greenfield survey, granted to Anthony Bledsoe, and bequeathed to his daughter Polly, now Polly Weatherhead, and sold by James Weatherhead and Polly Weatherhead to me, the said Henry R. Bledsoe; beginning at John Brown's west boundary line on an elm; running thence south 207 poles, to a black gum corner; thence east 58 poles, to two sugar trees; thence south 58 poles, to a stake in the north boundary of a tract of land claimed by Albert Holmes; thence west with said line, passing the corner of said land, in all, 244 poles, to a walnut and red oak, corner to Isaac Bledsoe's land; thence north 216 poles, to a hickory, red oak, and sycamore, to two and one-half acres sold by James Weatherhead for the use of Hopewell meeting-house; thence up the various meanders of the east fork of Bledsoe's creek with said line, to the mouth of my spring branch, corner to the meeting-house land; then east, in all, 186 poles, to the beginning, containing, by estimation, 320 acres, be the same more or less; to have and to hold the above described land to him, the said John Patterson, his heirs, executors, administrators, or assigns, together with all and singular its ways, waters, mines, minerals, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining; and I, the said Henry R. Bledsoe, for myself, my heirs, executors, administrators, or assigns, doth agree, to and with the said John Patterson, to warrant and forever defend the title of the said land against the claim or claims of every person whatsoever.

In witness whereof I have hereunto set my hand and seal, this day and date above written.

HENRY R. BLEDSOE. [SEAL.]

Test: ROBERT WEATHERHEAD,
J. P. PATTERSON.

State of Tennessee, Sumner circuit court, Sept. term, 1821.

Deed of bargain and sale from Henry R. Bledsoe, of the one part, and John Patterson, jr., of the other part, for 320 acres of land, was duly proven in open court, by the oaths of Robert Weatherhead and James Patterson, subscribing witness thereto, and ordered to be registered.

A copy—Attest: A. B. SHELBY, *Clerk*.

Registered and examined, October 20, 1821.

JAMES DOUGLASS, *Reg*.
By J. M. BULLIS, *D. R.*

STATE OF TENNESSEE, *Sumner county.*

I, John Bruce, register of said county, do hereby certify, that the above and foregoing contain a full, true, and perfect transcript of the deed from Henry R. Bledsoe to John Patterson, jr., as the same now appears of record in my office, in Book Q, page 76, this 9th day of September, 1847.

J. BRUCE,
Reg., Sumner county.

Bond.—Bond.

Know all men by these presents, that we, Polly Weatherhead and W. L. Malone, are held and firmly bound unto Wm. Baskerville and als., in the penal sum of two hundred dollars; which payment, well and truly to be made and done, we bind ourselves and each of our heirs, executors, administrators, or assigns.

Witness our hands and seals, this day of Sept., 1847.

The condition of the above obligation is such, that whereas the above bound Polly Weatherhead has prayed and obtained a writ of error from the judgment of the circuit court of the United States, for the district of Middle Tennessee, at Sept. term, 1847, in favor of the said William Baskerville and als., against the said Polly Weatherhead, in a certain action of ejectment, at the suit of the said Polly Weatherhead, lessee, to the Supreme Court of the United States. Now, if the said Polly Weatherhead shall prosecute her said writ of error with effect, or in case she fails therein, will well and truly pay all such damages and costs as said Supreme Court may order therein, then the above obligation to be void, else to remain in full force and virtue.

POLLY WEATHERHEAD, [SEAL.]
By her atto., Ro. L. Caruthers.
W. L. MALONE. [SEAL.]

Deposition of Mrs. Desha.

Question first, by Francis Rogan, one of the defendants:

Will you please state if you was a relative of the late Col. Anthony Bledsoe, who was killed by the Indians, 20th July, 1788?

Answer. I am; he was my uncle.

Question by same. Were you present with him at the time of his death?

Answer. I was.

You will please state at what time he died, and how he came to his death.

Answer. He was shot in my father's house by the Indians, at about 12 o'clock at night, and died a little after sunrise the next morning. The occurrence happened in the year 1788, the 20th day of July.

Question. Do you know any thing about his making a will? If so, please state all you know about it.

Answer. I know, after it was ascertained that his wounds were mortal, he made a will; it was written by James Clendening, who some short time after that married one of the daughters of my uncle, the testator.

Question. From all you saw and heard from your uncle at the time when he made his will, what did you think he meant by saying in his will that he desired his daughters to have a small tract of land?

Answer. My impressions have always been, that he thereby designed his daughters to have something like a half pre-emption, or 320 acres; that much and no more of his real estate; and their equal part each of his personal estate. He was in great agony from pain, and there seemed to be great confusion among us all, and hence I account for the apparent confused meaning of the will.

Question. Do you now recollect any of the peculiarities of his wounds? If so, please state what you know.

Answer. I well remember that the wound was made near the centre of the body; the ball went clear through the body, and it was thought that the same ball killed another man just standing behind my uncle; we were looking continually, all through the night, for another attack from the Indians.

Question by same. Do you know where the lands lie that were allotted to the daughters of the testator, your uncle?

Answer. I know that they were laid out on that part of my uncle's land, called and known by the name of the Greenfield survey; and further saith not

PEGGY DESHA.

Taken, subscribed, and sworn to, before Alexander Cannan, an acting justice of the peace for Scott county, State of Kentucky, on behalf of defendants, to be read as evidence in said cause; witness aged 73 years.

UNITED STATES OF AMERICA,
District of Middle Tennessee, ss.

I, Jacob McGavock, clerk of the circuit court of the United States, for the district aforesaid, do hereby certify, that the foregoing is a true and perfect transcript of the record and proceedings and exhibits in the suit, Polly Weatherheads' lessee, plaintiff, against Wm. Baskerville and others, defendants, tried in said court at September term, 1847.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at office, in Nashville, this first [L. S.] day of October, A. D. 1847, and of the independence of the United States the seventy-second.

JACOB McGAVOCK.